REPORTABLE

IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **OMP No.478/2007 & IAs No.9819-23/2007**

% **Date of Decision : September 07, 2007**

#VISHWA NATH AGRAWAL & ORS.
PETITIONERS

! Through: Mr.Sanjay Jain, Sr. Advocate with Mr.Trideep Pais & Ms.Nitika Mangla

Versus

$MRS.SATYAWATI DEVI & ORS. RESPONDENTS

^ Through:

CORAM:-
*** HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

S.N. AGGARWAL, J.

1. The petitioners have filed this petition under Section 34 of the Arbitration & Conciliation Act, 1996 for setting aside of the arbitral award dated 19.8.2000 of the sole Arbitrator Sh Sandeep Tandon in the matter of Karamyogi Group. The petition is also accompanied with an application under Section 14 of the Limitation Act for exclusion of time spent in pursuing the earlier OMP No. 267/2000 wherein the petitioners were respondents no. 3, 16, 11, 19

& 20 respectively.

2. I have heard Mr.Sanjay Jain, learned Senior Advocate who appeared on behalf of the petitioners and have also perused the paper book of the present petition.

3. The factual matrix of the case giving rise to this petition is as follows;

4. Certain disputes and differences arose between the parties arising out of business of Karamyogi Group of Companies and the same were referred to the sole Arbitration of Mr.Sandeep Tandon. The learned Arbitrator after hearing the parties passed his award on 19.8.2000. Subsequent to the publishing of the award, the petitioners herein filed an application before the learned Arbitrator under Section 33(1) and 33(4) of the Arbitration Act on 17.9.2000 for making an additional award. The learned Arbitrator after receiving copy of the said application passed an order dated 19.10.2000 and sent copy of the same to the petitioners. Aggrieved by the aforesaid award passed by the learned Arbitrator, some of the parties filed objections under Section 34 of the Arbitration & Conciliation Act, 1996 which were registered as OMP No. 276/2000. The petitioners in the present petition were respondent nos. 3, 16, 11, 19 and 20 respectively in OMP No. 276/2000. They had filed their reply to the

objections in OMP No. 276/2000. The reply was filed by them on 25.4.2001. The petitioners who had filed their reply in OMP No. 276/2000 had supported the objections and have prayed for setting aside of the arbitral award. However, except the petitioners the other respondents in OMP No. 276/2000 did not file any reply to the objections in OMP No. 276/2000. The objections in OMP No. 276/2000 were withdrawn by the petitioners of that case and an application filed by respondents no.1, 8, 9, 12 and 53 for their transposition as petitioners was also dismissed by the learned Single Judge vide order dated 6.11.2001. Aggrieved, by the dismissal of application for transposition, the respondents no. 1, 8, 9, 12 and 53 filed an appeal (FAO (OS) No. 537/2001) which was also dismissed by the Division Bench of this Court vide order passed on 15.5.2007. It is after the dismissal of the said appeal, the petitioners herein who were respondents no. 3, 16, 11, 19 and 20 in OMP No. 276/2000 have filed the present petition under Section 34 of the Arbitration & Conciliation Act, 1996 seeking to set aside the arbitral award dated 19.8.2000/19.10.2000. The petitioners have also filed an application under Section 14 of the Limitation Act and have prayed for exclusion of the time spent by them in pursuing the proceedings of OMP No. 276/2000 while computing the limitation for filing of objections

under Section 34 (3) of the Arbitration Act.

5. The main question that arises for consideration is whether the time spent by the petitioners in pursuing the proceedings of OMP No. 276/2000 can be excluded under Section 14 of the Limitation Act for computing the limitation provided in Section 34(3) for filing of objections against the arbitral award.

6. Mr.Jain appearing on behalf of the petitioners had vehemently argued that the petitioners are entitled for exclusion of time spent by them in pursuing the earlier proceedings in OMP No. 276/2000 as they were pursuing the said proceedings with due diligence. It was contended that the order of the Division Bench dated 15.5.2007 dismissing the appeal of those respondents whose request for transposition was disallowed by the learned Single Judge should not come in the way of the petitioners herein for challenging the arbitral award by way of present petition. Mr.Jain had further argued that the case of the petitioners is distinguishable from that of respondents whose appeal was dismissed by the Division Bench vide order dated 15.5.2007 inasmuch as the respondents whose request for transposition was disallowed had not filed any objections or even an application for condonation of delay whereas the petitioners who now seek to challenge the arbitral award dated 19.8.2000/19.10.2000

had filed their opposition to the arbitral award by way of their written statement in OMP No. 276/2000 and also by way of their reply filed in FAO (OS) NO. 537/2001.

7. I have given my anxious consideration to the arguments advanced on behalf of the petitioners but I could not persuade myself to agree with any of the contentions advanced on behalf of the petitioners.

8. Admittedly, the arbitral award which is now sought to be challenged in the present petition was published by the learned Arbitrator on 19.8.2000. This fact is admitted by the petitioners in Para 22 of their written statement (Annexure P-6) filed in OMP No. 276/2000. The objections against the arbitral award have been filed by the petitioners after about seven years. Section 34(3) of the Arbitration & Conciliation Act, 1996 prescribes a period of three months to be reckoned from the date on which the party intending to file objections had received the arbitral award. The proviso to sub-Section 3 of Section 34 of the Arbitration Act confers a discretion upon the Court to entertain the objections within a further period of 30 days in case the Court is satisfied that the applicant was prevented by sufficient cause from filing the objections within the prescribed period of three months. As per provisions contained in

Section 34(3) the Court cannot extend the time for filing of objections beyond four months:-

9. Provisions of Section 34(3) came to be interpreted in the decision of Supreme Court in ***Union of India vs. Popular Construction Company,*** IV (2001) CLT 65 (SC)=VII (2001) SLT 104=(2001) 8 SCC 470. IN the said decision, the Supreme Court held that the Arbitration and Conciliation Act, 1996 being a 'special law' and the provisions of Section 34 providing for a period of limitation different from that prescribed under the Limitation Act, the said provisions would govern the period of limitation and not any provisions of the Limitation Act. It was held by the Supreme Court that by virtue of Section 34(1) of the Act, recourse to a Court against an arbitral award cannot be made beyond the period prescribed in Sub-section (3). This court is of the view that Section 34 of the Act of 1996 is a complete code with regard to scope, parameters and the grounds on the basis of which an application to challenge an award can be filed."

10. In the present case, the objections have been admittedly filed by the petitioners against the arbitral award beyond prescribed period of four months. However, the petitioners have prayed for exclusion of time spent by them in pursuing the proceedings of

earlier OMP No. 276/2000. The petitioners were respondents no.3, 16, 11, 19 and 20 in that petition. It is no doubt true that the provisions of Section 14 of the Limitation Act are applicable to the arbitration proceedings under the Arbitration & Conciliation Act, 1996. Reliance in support of this proposition is made to a judgment of the Supreme Court in ***State of Goa vs. Western Builders (2006) 6 SCC 239***. Though as a general proposition the Limitation Act, 1963 applies to the arbitration proceedings under the 1996 Act but still the question is as to what extent Section 14 of the Limitation Act which deals with exclusion of time spent in prosecuting the remedy before another forum would apply to the facts of the present case. Section 14 of the Limitation Act 1963 reads as under :-

"14. Exclusion of time of proceeding *bona fide* in court without jurisdiction -

(1)In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue **and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.**

(2)In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted

in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3)Notwithstanding anything contained in rule 2 of Order XXXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation – For the purposes of this section, -

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;
(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;
(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

11. A plain reading of Section 14 of the Limitation Act would show that the party who seeks exclusion of time spent in earlier proceedings has to show that he was pursuing the earlier proceedings in good faith and with due diligence in a Court which by defect of jurisdiction or other cause of a like nature was unable to entertain the said earlier proceedings. In the present case, the petitioners admittedly did not file any objections against the arbitral award in the earlier proceedings in OMP NO. 276/2000. They were simply arrayed as respondents in that case and merely because they

had filed their reply in the earlier proceedings cannot be construed to mean that they were prosecuting their remedy against the arbitral award in good faith or with due diligence. Furthermore, the Court in which the earlier proceedings were prosecuted did not suffer from any defect of jurisdiction. Had the petitioners would have filed their objections against the arbitral award, the Court in which earlier proceedings (OMP No. 276/2000) were pending was not incompetent to deal with the objections of the petitioners. Even if it is assumed that the petitioners were interested in opposing the award through their reply filed in OMP No. 276/2000, the appropriate remedy available to them was to have made an application to the same Court for their transposition or to file an appeal against the order of the Single Judge before the Division Bench. Having not availed that remedy, the petitioners cannot now be heard to say that they were prosecuting the earlier proceedings in good faith or with due diligence. Furthermore, it may be noted that though according to the petitioners themselves the arbitral award was published on 19.8.2000 and thereafter order on their application under Section 33(1) and 33(4) of the Arbitration Act was passed on 19.10.2000, the petitioners had not filed their reply in opposition to the award within the statutory time period prescribed for filing of

objections under Section 34(3) of the Act. The written statement/reply to OMP No. 276/2000 was filed by the petitioners on 25.4.2001 and this was admittedly beyond the prescribed time period. Thus, looking from any angle the only inescapable conclusion is that the petitioners are now precluded from filing objections against the arbitral award and that they are not entitled to any exclusion of time allegedly spent in pursuing earlier proceedings of OMP No. 276/2000.

12. In view of the above, the application filed by the petitioners under Section 14 of the Limitation Act fails and is hereby dismissed. Consequent thereto the main petition filed by the petitioners seeking to challenge the arbitral award is also dismissed in limini as barred by limitation.

September 07, 2007 **S.N. AGGARWAL**
mb **(JUDGE)**